

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FLOYD D. LANE)	
Claimant)	
VS.)	
)	Docket No. 250,077
NATIONAL COLD STORAGE, INC.)	
Respondent)	
AND)	
)	
CHUBB INDEMNITY INSURANCE COMPANY)	
and WAUSAU INSURANCE COMPANIES)	
Insurance Carriers)	

ORDER

Respondent and its insurance carrier, Chubb Indemnity Insurance Company, appeal the January 6, 2000, preliminary hearing Order of Administrative Law Judge Julie A. N. Sample. The Administrative Law Judge assessed claimant's current need for temporary total disability compensation and medical treatment against respondent and its insurance carrier, Chubb Indemnity Insurance Company, finding that claimant had suffered an additional accidental injury on August 24, 1999.

ISSUES

Did claimant suffer a new accidental injury arising out of and in the course of his employment on August 24, 1999, or is claimant's current need for medical treatment and temporary total disability compensation a natural and probable consequence of claimant's original May 18, 1998, accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the issues raised on appeal are not jurisdictional issues.

Claimant suffered accidental injury on May 18, 1998, when his right lower extremity was crushed by a forklift. Claimant sustained a fracture of the right tibia/fibula, an open fracture and dislocation of the right ankle, and a fracture of the right calcaneus, and experienced some low back pain. Claimant underwent treatment with orthopedic surgeon Jeffrey T. MacMillan, M.D., and was ultimately returned to work in January 1999, part time, light duty. Claimant slowly increased his working hours until, by May 1999, he was returned to full duty without restrictions. Claimant did, however, indicate at the May 21,

1999, visit that he still had occasional low back and right buttock pain. By the July 9, 1999, visit, claimant's only complaint involved activity-related swelling in his right leg. Claimant's low back pain had resolved. Dr. MacMillan felt claimant was capable of performing his job without restrictions, although he did caution that claimant should avoid extended periods of standing and walking, and should not walk or stand on slippery or uneven surfaces.

On August 24, 1999, claimant awoke with a stiff back. He went to work and worked approximately 1½ hours. As claimant attempted to climb off his forklift, his back locked up and claimant was unable to move.

On appeal from a preliminary hearing, the Appeals Board is limited to review of allegations that the administrative law judge exceeded his or her jurisdiction. See K.S.A. 1999 Supp. 44-551. K.S.A. 1999 Supp. 44-534a lists specific issues identified as jurisdictional, including whether claimant suffered accidental injury, whether the accidental injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply.

In the current appeal, there is no dispute that claimant suffered injury arising out of and in the course of his employment with respondent. The only disputes are whether claimant suffered a single date of accident or multiple dates of accident, whether claimant suffered one accident or two, and which insurance carrier is liable for the benefits ordered. Those issues do not give rise to one of the jurisdictional issues identified in K.S.A. 1999 Supp. 44-534a and does not otherwise constitute an allegation that the Administrative Law Judge exceeded her jurisdiction. Carpenter v. National Filter Service, Docket No. 81,106 (Kan. App. 1999).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by the respondent and Chubb Indemnity Insurance Company should be dismissed, and the Order of Administrative Law Judge Julie A. N. Sample dated January 6, 2000, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS
Jeffrey A. Mullins, Kansas City, MO
David J. Bogdan, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director